

June 25, 1997

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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REPORT AND DECISION ON APPEAL OF CIVIL PENALTY ORDER.

SUBJECT: Department of Development and Environmental Services File No. **E9601273**

CHARLES GILLETTE
Code Enforcement Appeal

Location: 45807 SW 140th Street, North Bend

Appellant: Charles Gillette
5222 268th Avenue NE
Redmond, WA 98052

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Deny appeal
Department's Final:	Deny appeal
Examiner:	Deny appeal; modify Notice and Order

PRELIMINARY MATTERS:

Notice of appeal received by Examiner: January 13, 1997

Statement of appeal received by Examiner: January 13, 1997

EXAMINER PROCEEDINGS:

Pre-Hearing Conference:	May 8, 1997
Hearing Opened:	June 4, 1997
Hearing Closed:	June 4, 1997

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.

A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

Upon agreement of the parties, the time limits of King County Code Section 20.24.098 were waived.

ISSUES ADDRESSED:

- P-suffix conditions -- interpretation
- P-suffix conditions -- violation
- Site plan review
- Landscaping
- Penalty

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On December 23, 1996, the King County Department of Development and Environmental Services issued a Notice of King County Code Violation; Civil Penalty Order; Abatement Order; Notice of Lien; Duty to Notify ("Notice and Order") to Charles and Chieko Gillette. The alleged violations were the operation of a wood pallet manufacturing, repair, sales and distribution business on the property; and failure to comply with the conditions of approval of the zone reclassification of the property. An Appeal of the Notice and Order was filed by Charles Gillette, and a timely Statement of Appeal was submitted on January 13, 1997.

A pre-hearing conference identified four issues to be considered at the hearing on the appeal. One issue, based on estoppel, was withdrawn from consideration at the opening of the hearing. The issues to be determined are:

- A. Is the operation of a wood pallet recycling business in violation of King County Ordinance 11774 (the ordinance which approved reclassification of the property to I-P [Industrial, subject to conditions])?
- B. Has the Appellant failed to comply with site plan, environmental review, and permit application processes to determine compatibility of the development with surrounding uses and conformance with applicable codes?
- C. Does the Appellant's use of the property violate the landscape requirements of Condition 3.B(3) of Ordinance 11774?

In addition, should the Hearing Examiner determine that a violation exists, the appellant requests the Examiner to modify the abatement and penalty provisions of the Notice and Order to reflect the good faith and financial hardship alleged by the appellant.

2. In 1994 Charles Gillette applied for reclassification of the subject property from A-R (Rural Area) to the M-L (Light Manufacturing) zone. The application included a request to amend certain P-suffix conditions of the Snoqualmie Valley Area Zoning, which required primary access to be from SE North Bend Way, and installation of "Type 1" (solid, view-obscuring landscaping) 50 feet in width adjacent to A-R zoning. The applicant's proposal was to develop the property with a mini-self-storage warehouse and RV storage facility. Access to the site would be from SE 140th Street. Perimeter landscaping 20 feet in width along the street frontage and east property line, and 10 feet in width along the south and west property lines, was proposed.

A preliminary site development plan for use of the property was submitted in conjunction with the reclassification application. That plan was the basis for review by the SEPA Section of DDES, the Community Planning Section of the King County Planning and Community Development Division, the Hearing Examiner, and the King County Council. No other use of the site was proposed by the applicant or considered during the reclassification process.

3. Among the issues actively considered during the reclassification were:

- Compatibility of the proposal with adjacent and nearby land uses;
- Access to and impacts on traffic on SE 140th Street; and
- Landscape and screening requirements to visually buffer the proposed use from adjacent and nearby properties.

The proposed use for mini-storage and RV storage was significant in the consideration of each of those issues, and was significant to the outcome of the reclassification application. The action of the King County Council, reclassifying the subject property "I-P", Ordinance 11774, stated as the first condition that, "Use of the site shall be for 'mini' self-storage and recreational vehicle storage."

4. Property-specific development standards are authorized by the King County Code, and are denoted by the zoning map symbol "-P" ("P-suffix") following the zone designation of a property. Site-specific development standards may include limitations on the range of permitted land uses. KCC 21A.38.030.
5. The Department of Development and Environmental Services is the King County agency charged with administration, including enforcement, of land use regulations and controls. It is the opinion of that agency, based on all relevant information, that the land use controls applicable to the subject property limit its use to "mini" storage and recreational vehicle storage. The judgement of DDES is entitled to substantial weight.
6. Condition 2 of the reclassification requires that adequacy of services to the property and adequacy of on-site facilities be demonstrated through obtaining site plan or building permit approval.

Condition 3 requires compliance with the P-suffix conditions of the Snoqualmie Valley Area Zoning, except as modified by the reclassification. Implementation of P-suffix conditions is accomplished by County review of development proposals. KCC 21A.38.030.A. "Development proposal" is defined as, "Any activities requiring a permit or other approval from King County relative to the use or development of land". KCC 21A.06.310.

Construction of a storage shed, currently, used in the lessee's manufacturing process, was subject to the requirement for issuance of a King County building permit. UBC Section 301(a).

7. The appellant and his agent were aware that a permit was required prior to establishing a manufacturing use on the subject property. (Even if one accepts the appellant's interpretation of the conditions of the reclassification, and ignores the limited use authorized, application for site plan review and a building permit was required.) The appellant, in anticipation of annexation of

the subject property to the City of North Bend, elected to proceed with the change in use and construction of the tool shed without making application to King County for site plan review or the required permit.

8. Condition 3.B(3) of the reclassification requires that the property frontage along SE 140th Street be landscaped, except for the entrance road, with a 30-foot-wide Type 1 (visual screen) buffer. A 30-foot-wide landscape buffer has not been provided along SE 140th Street.
9. It appears from a preponderance of the evidence that the appellant and his agent were provided with erroneous, incomplete and ill-informed information by one or more employees of King County. That information related to uses of the site which might be approved under the existing zoning (assuming proper application were made), and the legality of the existing use of the site. However, in the absence of application for site plan approval or a building permit, no King County employee conducted the comprehensive analysis or review which would occur upon application.

The appellant's agent is a sophisticated representative, knowledgeable of King County codes and processes. There is no reason to believe that the appellant was reasonably misled by any erroneous, incomplete or ill-advised information provided by County employees. The over-arching fact of the case is that the appellant knew that site plan review and a permit were required for the current use of the subject property, but chose to proceed with the establishment of the new use and associated construction without making application.

CONCLUSIONS:

1. Use of the subject property under the existing zoning granted by King County Ordinance 11774 is limited to mini-self-storage and recreational vehicle storage.
2. The current use of the subject property, operation of a wood pallet manufacturing, repair, sales and distribution business on the property, even if a permitted use, required application for site plan review and a building permit. In the absence of making application for such permits, the appellant failed to comply with the site plan and environmental review processes required by Ordinance 11774.
3. The appellant's use of the subject property fails to meet the condition of the reclassification which requires 30 feet of Type 1 landscape buffer along the frontage of SE 140th Street.
4. The failure of the appellant to make application for required permits was intentional, not based on any misunderstanding concerning the need for such permits. The appellant intentionally chose not to meet applicable King County codes and regulations, including the specific requirements of the reclassification of the property obtained by the appellant on May 1, 1995.

DECISION:

Except for modification of the dates by which compliance is required, or from which penalties shall run, the Notice and Order issued by the King County Department of Development and Environmental Services on December 23, 1996 is **AFFIRMED**.

The date for correction of all violations is modified from March 1, 1997 to September 1, 1997. If the

unlawful use and occupancy is not terminated, and all structures and materials associated with non-residential use of the property removed, by September 1, 1997, the penalties set by the Notice and Order shall accrue from that date.

The date after which the Department may abate the violations, if not corrected, is modified from April 1, 1997, to November 1, 1997.

In all events, the appellant shall be liable for the billable costs of the Department of Development and Environmental Services incurred to date and to be incurred in this proceeding.

ORDERED this 25th day of June, 1997.

James N. O'Connor
King County Hearing Examiner

TRANSMITTED this 25th day of June, 1997, by certified mail, to the following parties:

Kokie Adams
Attorney At Law
PO Box 6699
Lynnwood, WA 98036-6699

Gary Moore
Woodriver Community Organization
45702 SE 139th Place
North Bend, Wa 98045

Robert Desrosier
10710 - 183rd Avenue NE
Redmond, WA 98052

Craig Nelson
45807 SE 140th
North Bend, WA 98045

Charles Gillette
5222 - 268th Avenue NE
Redmond, WA 98052

Diane Pottinger
13626 Main Street
Bellevue, WA 98005

Rick Anderson
935 Daley Street
Edmonds, WA 98020

Gary Upper
Connor Homes
840 - 108th Avenue NE, #202
Bellevue, WA 98004

TRANSMITTED this 25th day of June, 1997, to the following:

Ken Dinsmore, DDES/Building Services
Tim Cheatum DDES/Land Use Services

Lamar Reed, DDES/Building Services
Karen Scharer, DDES/Land Use Services

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JUNE 4, 1997 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9601273 - GILLETTE:

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Lamar Reed, Ken Dinsmore, Rick Anderson, Gary Upper, and Gary Moore.

The following exhibits were offered and entered into the record:

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| Exhibit No. 1 | Department of Development and Environmental Services Preliminary Report to the King County Hearing Examiner for the June 4, 1997 public hearing |
| Exhibit No. 2 | Copy of Notice & Order issued December 23, 1997 |
| Exhibit No. 3 | Copy of Appeal received January 3, 1997 |
| Exhibit No. 4 | Copy of portion of Kroll map page |
| Exhibit No. 5 | Copy of Situs property information |
| Exhibit No. 6a | Copy of memo dated December 3, 1996 from Gary Upper to Bob Derrick |
| Exhibit No. 6b | Copy of letter dated December 1, 1996 from Gary Upper to Bob Derrick |
| Exhibit No. 7 | Copy of letter dated December 23, 1996 to Gary Upper from Bob Derrick |
| Exhibit No. 8 | Copy of letter dated January 13, 1997 from Rick Anderson |
| Exhibit No. 9 | Copy of letter dated January 13, 1997 from Rick Anderson to Hearing Examiner |
| Exhibit No. 10 | Copy of Statement of Appeal dated January 13, 1997 |
| Exhibit No. 11 | Copy of letter dated January 21, 1997 from Rick Anderson to Ken Dinsmore |
| Exhibit No. 12 | Copy of letter dated January 21, 1997 from Rick Anderson to Lamar Reed |
| Exhibit No. 13 | Copy of Ordinance 11774 - Not Entered |
| Exhibit No. 14 | Photos of Site taken May 28, 1997 by DDES Staff |
| Exhibit No. 15 | Letter from Gary Moore to Lamar Reed - Not Admitted |
| Exhibit No. 16 | Rick Anderson's Land Use Analysis -- AAA Pallets |
| Exhibit No. 17 | Rick Anderson -- Limitations of Use on the Site Imposed by Ordinance 11774 |

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